states. A personal obligation, which is the result of some act of the person bound, is created by the law of the place where that act is done,[3] whether it is done by the principal directly or through the medium of an agent. If, for example, a partnership is formed in one state and its agent contracts an obligation in another, the liability of the partners is governed by the law of the place in which the agent acts.[4] The existence of the relation of principal and agent, however, is to be determined by the law of the place where the transaction occurred from which the agency is alleged to have arisen. Thus, in the case of an attempt to fasten liability upon a special partner as a result of the acts of an agent of the partnership, it has been held that the law of the place of the partnership agreement must determine whether the partnership agent is empowered to bind the special partner.[5] It would seem to follow that the incidents of the relation of stockholder and corporation should be fixed by the law of the place where that relationship came into being, namely, the place where the corporation was created. Of course, it must be regarded as well settled that the agents of a corporation are not the agents of the stockholders.[6] That the maximum liability of an owner of stock is settled at the time of incorporation is shown by several decisions in which statutes imposing upon stockholders individual liabilities not imposed by the laws of their charters have been held unconstitutional as impairing the obligations of contracts.[7] Of course parties may in all cases introduce the provisions of a foreign law into their contract,[8] but it is believed that the mere fact that a corporation is intended to transact business abroad should not be sufficient to impose the statutory liability prescribed by the laws of a foreign state upon stockholders who incorporated under laws providing for a limited liability.

THE EQUITY OF MARSHALING. — Where one creditor may resort to two securities for the payment of his debt while another has a subsequent claim upon only one of them, the former will be compelled in equity, in so far as he may not be prejudiced, first to exhaust that security which the latter cannot reach. Thus if A has mortgages of Whiteacre and of Blackacre, and B has a second mortgage upon Blackacre only, B may in foreclosure proceedings require A to resort first to Whiteacre.[1] And if A in fact proceeds first against Blackacre, B may reach Whiteacre by subrogation.[2] In the United States the majority of the courts say that B has a fixed equitable right in Whiteacre, which, like ordinary equities, persists until the *res* gets to a *bona fide* purchaser, so that B may still marshal A against Whiteacre after it has been mortgaged to C with notice of the other mortgages.[3] The English courts deny that any equitable right arises until foreclosure proceedings are commenced. Accordingly, as between B and C, they pay A's mortgage ratably from Whiteacre and Blackacre.[4]

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[3] 3 Beale, Cas. Confl. of L. 515.
[4] Baldwin *v.* Gray, 4 Mart. N. S. (La.) 192.
[5] King *v.* Sarria, 69 N. Y. 24.
[6] 1 Morawetz, Priv. Corp. § 565. See Smith *v.* Hurd, 12 Met. (Mass.) 371.
[7] Ireland *v.* Palestine, etc., Turnpike Co., 19 Oh. St. 369.
[8] Jacobs *v.* Crédit Lyonnais, 12 Q. B. D. 589, *per* Bowen, L. J.

[1] Aldrich *v.* Cooper, 8 Ves. 382, 394.
[2] Gibson *v.* Seagrim, 20 Beav. 614.
[3] Robeson's Appeal, 117 Pa. St. 628.
[4] Barnes *v.* Racster, 1 Y. & C. C. C. 401.

This conflict of authority appears to turn on the nature of marshaling. Marshaling is an equitable procedure to apply assets in accordance with the rights of the parties under the circumstances presented to the court, whether in the payment of creditors from a decedent's estate or in the satisfaction of claimants from overlapping securities. It is part of the broad question, what property can be reached to satisfy an obligation, and is therefore a matter of remedy, to be determined by the law of the forum at the time of the suit.[5] This reasoning accords with the English view. In the one American case, however, which squarely raised the point in this form, a majority of the court held that it was a matter of right, to be governed by the law at the time of B's mortgage.[6] Granting the correctness of the English theory, it does not follow, however, that the general result under the prevalent American view is wrong. The conflict should be regarded as a difference not of legal principle but of fact, namely, whether under the circumstances it is fairer that C should exonerate B or that they should contribute ratably, and on this courts may well differ. Where part of property subject to three mortgages was taken for a railroad and, pending the suit for compensation, which was to be subject to the mortgages, the third mortgagee was cut out of the remaining land by a foreclosure of the second mortgage, it was recently held, approving the English cases, that the first mortgage could not be marshaled against the land in the hands of the purchaser at the foreclosure sale, but should be paid ratably from the land and the compensation money. *Bates* v. *Boston Elev. R. Co.*, 72 N. E. Rep. 1017 (Mass.). These facts neatly avoid the general conflict so that no other decision would be justified. For, the moment the third mortgagee is in a position to seek marshaling against the land, the purchaser at foreclosure is on hand seeking similar relief against the compensation money. The situation would be the same if simultaneous mortgages were made of Blackacre and Whiteacre to B and C respectively. Neither deserves a preference.

SPECIFIC PERFORMANCE FOR INSOLVENCY. — Inadequacy of legal remedy is the basis of equity jurisdiction. The reason, therefore, that contracts regarding chattels are seldom enforced in equity is not that they constitute a subject-matter over which equity will not take jurisdiction, but that, generally, the legal remedy of damages is adequate. Accordingly, where a chattel has a unique value, equity will grant relief as readily as in case of land.[1] Likewise, upon the ground of inadequacy of redress at law, equitable interference may be demanded by the peculiar circumstances of a transaction.[2] When a vendee has paid the purchase price for specific goods, for instance, and the vendor has become insolvent, the great weight of authority grants the vendee specific performance, contrary to a recent decision in Florida.[3] *Hendry* v. *Whidden*, 37 So. Rep. 571. Ordinarily, a sale of goods even with advance payment, raises no equity upon which specific performance can be predicated, for money damages afford ample remedy. But when the

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5 *Cf.* Mineral Point R. R. Co. *v.* Barron, 83 Ill. 365.
6 Bank of Orangeburg *v.* Kohn, 52 S. C. 120.

1 See Ames, Cas. Eq. Jur. 40, *n.*
2 Parker *v.* Garrison, 61 Ill. 250.
3 Parker *v.* Garrison, *supra;* McNamara *v.* Home Land Co., 105 Fed. Rep. 202; Draper *v.* Stone, 71 Me. 178 (*semble*); Clark *v.* Flint, 22 Pick. (Mass.) 231. *Contra*, McLaughlin *v.* Piatti, 27 Cal. 451.